

IN THE
~~Supreme Court of the United States~~

ALEXANDER L. STEVENS
Counsel

October Term, 1984

JULIAN EMMETT TURNER, III,

Petitioner,

v.

STATE OF MARYLAND, PRINCE GEORGE'S COUNTY,

OFFICE OF STATE'S ATTORNEY, ARTHUR A.

MARSHALL, JR., ROGER MILLSTEAD, MARYLAND

STATE POLICE, COL. THOMAS SMITH,

VERNON HERRON, CHARLES HUTCHINS

and DOES I through X inclusive,

Respondents.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

JULIAN EMMETT TURNER, III
2440½ Vancouver Avenue
San Diego, California 92104
Telephone: (619) 281-1254

QUESTIONS PRESENTED

Is non-residency a suspect classification prohibited by the Fourteenth Amendment?

Is omission of the duty to provide equal protection of the laws actionable under the Civil Rights Acts?

Is 42 U.S.C. § 1981 restricted to violations predicated upon a "racial anamous"?

Is a plea-in-abatement based upon judicial immunity available to prosecutors who have breached their duty to uphold the law?

Is judicial immunity a shield for violations of the Fourteenth Amendment?

Does the Eleventh Amendment shield states from Civil Rights Acts suits stemming from the Fourteenth Amendment?

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Respondents.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

Petitioner respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered on January 16, 1984.

OPINIONS BELOW

On January 16, 1984 petitioner's petition for rehearing was denied by the United States Court of Appeals at the direction of Judge Sprouse for a panel consisting of Judge Russel, Judge Widener, and Judge Sprouse.

Petitioner's original appeal was denied by the United States Court of Appeals on December 8, 1983 before the same panel with no published opinion. The original Motion to Dismiss issued on August 24, 1983 by the United States District Court for the District of Maryland at Baltimore. Judge Alexander Harvey, II, issued a memorandum and order identified by Civil No. H-83-1501. It was adopted by the Court of Appeals per curiam. It is reprinted in Appendix A located at p. A-2 of this petition.

JURISDICTION

The jurisdiction of the Supreme Court of the United States of America is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Article III, section 2, Article IV section 2, the Sixth Amendment, the Eleventh Amendment, the Thirteenth Amendment and the Fourteenth Amendment of the United States Constitution which are set out at length in appendix "B" at pp. B-1 through B-2 of this petition.

This case involves Act of Feb. 25, 1871, sec. 2, 16 Stat. 431, 42 U.S.C. 1981, 42 U.S.C. 1982, 42 U.S.C. 1983, 42 U.S.C. 1985, 42 U.S.C. 1986, and 42 U.S.C. 1988, which is set out at length in appendix "B" at pp. B-3 through B-6 of this petition.

STATEMENT OF THE CASE

In October of 1977, in the City of District Heights, Maryland, the petitioner was stabbed with a knife by his father causing the petitioner serious bodily harm. Petitioner lost his spleen. Petitioner's kidney was severed. Petitioner's peritoneum was punctured and his intestinal track was cut. Petitioner's torso was permanently disfigured. Said act was a violation of the laws of the State of Maryland including, but not limited to attempted murder, assault with a deadly weapon, battery, and mayhem.

The State of Maryland issued a warrant for the arrest of petitioner's father on the charge of attempted murder. In 1982, petitioner's father

was arrested on the Maryland warrant in the State of Georgia. Petitioner's father was arrested after he confessed his crime to a citizen of Georgia. Said citizen informed Georgia officials of petitioner's father's confession leading to the arrest.

The State of Georgia notified the State of Maryland of the arrest. The State of Georgia stood ready, willing, and able to extradite petitioner's father to the State of Maryland. On March 2, 1982, the State of Georgia was forced to release petitioner's father because the extradition period had passed without the State of Maryland requesting extradition.

The defendants knew that the charges against petitioner's father were true because of petitioner's father's confession, physical evidence in their possession, their own investigative reports, inferences from the flight of petitioner's father from justice, medical records, statements from petitioner's mother who still lived in Maryland, and finally from petitioner's statements. In particular, the defendants had obtained a written declaration from petitioner made while in intensive care in case of petitioner's death. Defendants knowledge is evidenced by the continued issuance until this day of the warrant for attempted murder and their use of a plea-in-abatement which admits the truth of petitioner's allegations.

During the period of extradition the petitioner was informed by Officer Vernon Herron of the Maryland State Police, acting as an agent of the Maryland State's Attorney, of the capture of his father in Georgia. Petitioner subsequently agreed to return to Maryland in order to testify. Officer Herron agreed to keep petitioner apprised of the progress of the case.

Officer Vernon Herron subsequently reported back to his superiors. These superiors included one Roger Millstead, Assistant District Attorney for the State of Maryland. Petitioner alleged that these defendants discussed the case and agreed amongst themselves not to pursue the extradition of petitioner's father because the victim no longer lived in the State of Maryland. The petitioner was *not* informed of this decision or any further developments by the State of Maryland or its agents.

On June 15, 1982, Officer Charles Hutchins of the Maryland State Police informed the administrator of petitioner's grandmother's estate located in Richmond, Virginia, that petitioner's father had been released on March 2, 1982 and that his whereabouts were unknown. Officer Hutchins informed said administrator that petitioner's father had been

released because the victim no longer lived in the State of Maryland. Officer Hutchins informed said administrator that the warrant of attempted murder for petitioner's father remained outstanding and that if petitioner's father returned to the State of Maryland, he would be prosecuted. The administrator used this information to attempt to deter the petitioner from returning to the Commonwealth of Virginia and demanding an accounting of the estate.

REASONS FOR GRANTING THE WRIT

I

NON-RESIDENCY IS A SUSPECT CLASSIFICATION CREATING A PROTECTED CLASS UNDER THE FOURTEENTH AMENDMENT

The Constitution, while preserving sovereignty of states over criminal acts committed within state boundaries, establishes the class of non-residents by requiring states to provide equal protection of the laws for non-residents. This principle is embedded in Article IV, section 2 of the Constitution stating the following:

"The citizens of each state shall be entitled to all privileges and immunities of the several states."

The Fourteenth Amendment incorporates Article IV, section 2 by reference stating that "[N]o State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, . . ."

The Supreme Court has twice acknowledged non-residency as a suspect classification entitling those within that class to a redress of grievances under the Civil Rights Acts and the Fourteenth Amendment in the leading cases of *Shapiro v. Thompson*, 394 U.S. 618 (1968) and *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1973). Petitioner submits that the lower court erred by ruling that petitioner's allegations of discrimination based upon non-residency was not a class-based invidiously discriminatory anamous within the purview of the Fourteenth Amendment.

II

**THE FOURTEENTH AMENDMENT IMPOSES UPON
THE STATES THE DUTY TO PROVIDE
EQUAL PROTECTION OF THE LAWS OMISSION
OF WHICH IS ACTIONABLE UNDER THE
CIVIL RIGHTS ACTS**

The first section of the Fourteenth Amendment imposes upon the states the duty to provide equal protection of the laws by declaring that, "[N]o State shall, . . . deny to any person within its jurisdiction the equal protection of the laws." The use of the word "shall" indicates that equal protection of the laws is a mandatory duty.

Article IV, section 2 of the Constitution, the "privileges and immunities" clause cited in the Fourteenth Amendment, contains an extradition clause for its enforcement. The extradition clause states:

"A Person charged in any State with Treason, Felony or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the state having Jurisdiction of the Crime."

The Fourteenth Amendment incorporates Article IV, section 2, the "privileges and immunities" clause, by reference stating that "[N]o State shall . . . abridge the privileges and immunities of citizens of the United States, . . .". Presumably the enforcement provision of extradition contained in Article IV, section 2 is also incorporated by reference.

The Civil Rights Acts define the scope of the Fourteenth Amendment duties imposed upon the states. 42 U.S.C. 1981 imposes upon the states the duty to protect the right of a person to give evidence. 42 U.S.C. 1982 imposes the duty of requiring the states to protect the right to inherit. 42 U.S.C. 1983 prohibits states from usages and customs impeding the equal protection of laws. 42 U.S.C. 1985 prohibits states from obstructing justice or combining into a conspiracy to prevent equal protection of the laws. 42 U.S.C. 1986 requires states to use due diligence to prevent negligent deprivation of the equal protection of the laws. 42 U.S.C. 1988 provides for costs and attorney's fee in a Civil Rights Act suit.

By failing to extradite, the State of Maryland prevented petitioner from giving evidence. The State of Maryland has interfered with the accounting of petitioner's grandmother's estate. The State of Maryland has adopted the custom and usage of refusing to extradite criminals based upon the non-residency of the victim. The State of Maryland and its agents have conspired together to obstruct justice by refusing to extradite an attempted murderer. The State of Maryland has failed to be diligent in providing equal protection of the laws.

Acts of omission as well as commission are actionable under the Fourteenth Amendment and the Civil Rights Acts. In *Rizzo v. Goode*, 423 U.S. 362 (1975) at 384-85 the court stated:

"It is abundantly clear that one reason the legislation was passed was to afford a federal right in federal courts because by reason of prejudice, passion, NEGLECT, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by state agencies."

Most recently courts have upheld actions for omissions to act in *Cooper v. Molko*, 512 F.Supp. 563 (D.C., N.D.Cal. 1981) and *Smith v. Ross*, 482 F.2d 33 (6th Cir. 1973).

In the instant case, the lower court denied a right of action for "abstract violation of a constitutional right" citing *United States Ex. Rel. Birnham v. Dolan*, 452 F.2d 1078 (3d Cir. 1971). This case was inappropriately applied. In *Birnham*, *id.*, the word "abstract" was used to describe a violation of constitutional right preemptively cured. In that case, the denial of an attorney at a line-up was cured by exclusion of the identification at trial leading to acquittal. Leaving a victim at risk by allowing an attempted murderer at bay is hardly an abstract violation of constitutional law. Indeed, the actions of the State of Maryland have not only placed an attempted murderer at large, but may have in turn violated the criminal's Sixth Amendment right to a speedy trial barring subsequent conviction.

III

42 U.S.C. 1981 HAS A DUAL BASIS OF AUTHORITY UNDER BOTH THE THIRTEENTH AND FOURTEENTH AMENDMENT AND WHEN PROCEEDINGS ARE BROUGHT AGAINST THE STATE THE FOURTEENTH AMENDMENT PROVIDES AUTHORITY NOT LIMITED BY THE REQUIREMENT OF A RACIAL ANAMOUS OF THE THIRTEENTH AMENDMENT

42 U.S.C. 1981 has a dual basis of authority under both the Thirteenth and Fourteenth Amendment. When proceeding against States, the statute is powered by the Fourteenth Amendment, not the Thirteenth Amendment.

The lower court cited *Runyon v. McCrary*, 427 U.S. 160 (1976) as authority for limiting 42 U.S.C. 1981 actions to instances involving a racial anamous. *Runyon, id.*, was misapplied to the present case. In *Runyon, id.*, the courts allowed an action against *private* schools under the theory that segregation was a "badge of slavery" outlawed by the Thirteenth Amendment. The instant action is against the *State* for violating equal protection of the laws requirement of the Fourteenth Amendment.

IV

A PLEA-IN-ABATEMENT PREDICATED UPON THE EXTENSION OF JUDICIAL IMMUNITY TO PROSECUTORS IS NOT AVAILABLE TO PROSECUTORS WHO HAVE BREACHED THEIR DUTY TO UPHOLD THE LAW

Prosecutors are under a duty to uphold the law. *Imbler v. Pachtman*, 424 U.S. 409 (1976), cited by the lower court, was concerned only with the chilling effect of suits for malicious prosecution and defamation might have upon a prosecutor's discretion in carrying out the duty to uphold the law. It did not grant immunity for breach of the very duty it was to protect.

In *Imbler, id.*, the prosecution tried and convicted a member of a gang for several crimes including one which occurred before Imbler had joined the gang. The prosecutor discovered this error in the course of justice

only after conviction and promptly moved to correct it. Afterwards, Imbler complained that his right to a fair trial had been violated because the prosecution had relied upon a witness who had lied about his economic and social standing in the community. However, these were collateral matters not subject to impeachment. Consequently, in that case the prosecution's reliance upon the witness was justified.

The prosecutors for the State of Maryland however, are being sued for breach of the very duty the immunity granted in *Imbler*, *id.*, sought to protect. They breached their duty by failing to extradite an attempted murderer. The shield of judicial immunity does not extend to acts which are in themselves a breach of the law (non-feasance of office) and the Constitution.

V

**JUDICIAL IMMUNITY DOES NOT SHIELD
VIOLATIONS OF CIVIL RIGHTS ACTS UNDER
THE FOURTEENTH AMENDMENT**

There is no judicial immunity for acts violating the Civil Rights Acts and the Fourteenth Amendment. Indeed, even judges may be held accountable for violating the Civil Rights Acts. *Ex parte Virginia*, 100 U.S. 339 (1880). Modernly, the Supreme Court has upheld *Ex parte Virginia*, *id.*, in *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1975).

VI

**STATES ARE PERSONS SUBJECT TO SUIT UNDER
THE CIVIL RIGHTS ACTS ENFORCING THE
FOURTEENTH AMENDMENT WHICH IS NOT
BARRED BY THE ELEVENTH AMENDMENT**

The instant suit was invited by Mr. Justice Brennan in *Hutto v. Finney*, 437 U.S. 678 (1979) at p. 703 as follows:

"Given our holding in *Monell*, the essential premise of our *Edelman* holding -- that no statute involved in *Edelman* authorized suit against 'a class of defendants which literally includes States,' 415 U.S., at 672 -- would

clearly appear to be no longer true. Moreover, given *Fitzpatrick's* holding that Congress has plenary power to make States liable in damages when it acts pursuant to § 5 of the Fourteenth Amendment, it is surely at least an open question whether § 1983 properly construed does not make the States liable for relief of all kinds, notwithstanding the Eleventh Amendment. Whether this is in fact so, must of course await consideration in an appropriate case."

The lower court relied upon obiter dictum in *Quern v. Jordan*, 440 U.S. 332 (1979) as standing for the proposition that states were not persons subject to suit under the Civil Rights Acts enforcing the Fourteenth Amendment and as such were immune from suits for damages under the Eleventh Amendment. However, *Quern, id.* concerned only the question of whether expenses incurred in complying with a prospective injunction ordering notices to be sent out were merely incidental to the court order and not damages per se. This was consistent with the ruling in *Edelman v. Jordan*, 415 U.S. 651 (1974) which existed prior to *Fitzpatrick, supra*, and *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978). The obiter dicta addressed issues not in controversy; thus it was beyond the power of the courts under Article III, section 2 which limits the court's power to "cases" and "controversies." Mr. Justice Brennan's concurring opinion questions portions of Mr. Justice Rehnquist's opinion as follows:

"It is deeply disturbing, however that the Court should engage in today's gratuitous departure from the customary judicial practice and reach out to decide an issue unnecessary to its holding. The Court today correctly rules that the explanatory notice approved by the Courts of Appeal below is 'properly viewed as ancillary to . . . prospective relief.' This is sufficient to sustain the Court's holding that such notice is not barred by the Eleventh Amendment. But the Court goes on to conclude in what is patently dicta, that a State is not a 'person' for purposes of 42 U.S.C. 1981, Rev. Stat. 1979."
Quern v. Jordan, 440 U.S. at 350.

The Eleventh Amendment was passed in 1798 and prevented the construction of federal power from extending suits *existing at the time* to allow actions by citizens against states. It did not bar suits based upon

subsequently enacted constitutional amendments. The court in *Fitzpatrick v. Bitzer, supra*, acknowledged the power of the federal government to enact legislation allowing suits by individual citizens against states under the Fourteenth Amendment.

In *Monell, supra*, the court determined that the Civil Rights Acts use of the word "person" applied to states. Here the prior misconstruction of these statutes as not applying to states was corrected by the discovery of the Dictionary Act. The Dictionary Act, Act of Feb. 25, 1871, sec. 2, 16 Stat. 431 stated that, "in all acts hereafter passed . . . the word 'person' may extend and be applied to bodies politic and corporate. . . ." As since the Dictionary Act and the Civil Rights Acts were passed under the auspices of the Fourteenth Amendment which applies only to state action, the only logical conclusion is that 'persons' under the Civil Rights Act referred to the "persons" through which the state exists and exerts its authority.

The petitioner asserts that the Civil Rights Acts are sufficiently specific as to allow suits against the state by citizens. The history of allowing equitable relief against the states bears this out. Petitioner has consequently sued for both monetary damages and for equitable relief in the form of a writ of mandamus ordering the State of Maryland to bring charges against the States Attorney for non-feasance of office.

The true distinction between the *Edelman - Quern* and the *Fitzpatrick - Monell* lines of cases lies in the nature of the programs administered by the states in those cases. In *Edelman* and *Quern* the states were administering welfare programs which in large part are really federal revenue sharing programs only administered by the state. Fairness dictates that back payments for welfare should come from their largely federal source. However, administrative costs should be born by the states who by accepting these funds have incurred a corresponding duty to administer them fairly. This would explain why expenditures from state treasuries could be ordered as ancillary relief to equitable orders of administration such as ordering the state to pay for notices informing recipients how to correct past errors in determining eligibility.

On the other hand, the *Fitzpatrick - Monell* line of cases dealt with programs which were wholly operated and financed by the states. The state employee retirement system in *Fitzpatrick* was a state program to which the equal protection of the Fourteenth Amendment applied. Similarly, state employees forced into pregnancy have concerns a wholly

state matter to which the Fourteenth Amendment applied. The critical distinction lies in the fact that the Fourteenth Amendment addresses *state* actions and is not addressed to the federal government. The criminal law of Maryland is a state matter to which the Fourteenth Amendment requirement of equal protection of the law attaches. Therefore, the State of Maryland can be held liable under Civil Rights Acts.

CONCLUSION

WHEREFORE, petitioner respectfully prays that a writ of certiorari be granted.

Respectfully submitted,

JULIAN EMMETT TURNER, III

Petitioner

APPENDICES

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JULIAN EMMETT TURNER, III

* CIVIL ACTION
NO. H-83-1501

v.

STATE OF MARYLAND; PRINCE GEORGE'S
COUNTY; OFFICE OF STATE'S ATTORNEY;
ARTHUR A. MARSHALL, JR.; ROGER
MILLSTEAD; MARYLAND STATE POLICE;
COL. THOMAS SMITH; VERNON HERRON;
CHARLES HUTCHINS; DOES I THROUGH
X INCLUSIVE

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JUDGMENT

In accordance with the Memorandum and Order dated August 24, 1983 filed in the above entitled case, it is

ORDERED and ADJUDGED:

1. That judgment be and the same hereby is entered in favor of the defendants, with costs.

Dated at Baltimore, Maryland this 25th day of August, 1983.

PAUL R. SCHLITZ
Clerk

By: Elaine A. Michael
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JULIAN EMMETT TURNER, III	*	CIVIL NO. H-83-1501
Plaintiff	*	
v.	*	
STATE OF MARYLAND	*	
Defendant	*	
• • • • •	• • •	

MEMORANDUM AND ORDER

Having duly paid a filing fee, Julian Emmett Turner, III, plaintiff, has filed a *pro se* civil action in this Court. In his 10-page typed complaint, plaintiff has named as defendants (1) State of Maryland; (2) Prince George's County; (3) the Prince George's County Office of State's Attorney; (4) Arthur A. Marshall (the State's Attorney of Prince George's County); (5) Roger Millstead (an Assistant State's Attorney for Prince George's County); (6) the Maryland State Police; (7) Colonel Thomas Smith (Superintendent of the Maryland State Police); (8) Officer Vernon Herron (Maryland State Police); and (9) Lt. Charles Hutchins (Maryland State Police). Plaintiff has also sought to sue various other unnamed persons claimed to have made decisions or taken actions relating to the matters in suit. Suit has been brought under 42 U.S.C. §§ 1981, 1983, 1985, 1986 and 1988. Plaintiff asserts that he has brought this action to redress a deprivation of the equal protection of the laws by the State of Maryland, and a denial by the State of Maryland of rights, privileges and immunities to which its citizens are entitled.

Plaintiff alleges that he was stabbed with a knife by his father, Julian Emmett Turner, in October of 1977, causing him serious bodily injuries. He asserts that defendants issued a warrant for the arrest of his father on charges of attempted murder and that his father was subsequently arrested in Georgia on that warrant. According to plaintiff, the State of Georgia was ready and willing to extradite plaintiff's father to the State of Maryland, but defendants decided not to pursue the extradition of plaintiff's father because plaintiff had moved to California. It is further alleged that on March 2, 1982, plaintiff's father was released by the State

of Georgia because the waiting period for extradition had expired. According to plaintiff the warrant remains outstanding, and if plaintiff's father returned to the State of Maryland and posed a threat to Maryland citizens, the State of Maryland would prosecute his father. Plaintiff complains that defendants Hutchins and Herron did not inform him of the failure of the State of Maryland to extradite his father. Plaintiff asserts that the release of his father has left him vulnerable to future attack and has caused him great emotional stress and humiliation. As relief, plaintiff seeks \$1,000,000 in damages from all defendants jointly and severally, \$50,000 punitive damages from defendant Millstead and from others responsible for the decision not to extradite his father, attorneys' fees and an injunction ordering the State of Maryland to bring charges against defendant Millstead and others responsible for the deprivation of plaintiff's civil rights.

On behalf of the defendants, the Attorney General of the State of Maryland has filed various motions to dismiss, together with supporting memoranda of law. Plaintiff has now filed a lengthy opposition to these pending motions to dismiss, and has attached to this opposition excerpts from cases relied upon by him. Following a review of the pleadings, motions and memoranda, this Court concludes that no hearing is necessary for a decision on the pending motions. See Local Rule 6. For the reasons stated herein, all pending motions to dismiss will be granted.

From a review of the allegations of the complaint, this Court concludes that plaintiff has failed to state a claim upon which relief can be granted under any of the federal civil rights statutes cited by him. The complaint is therefore subject to dismissal pursuant to Rule 12(b)(6), F.R.Civ.P.

Essentially, plaintiff contends that his constitutional rights have been infringed because the individual responsible for committing a crime against his person was not prosecuted by the State of Maryland. This Court knows of no case holding that a citizen has a constitutional [sic] right to have another citizen prosecuted for a crime which has been committed. Although he has cited many other cases in his opposition to the pending motions to dismiss, plaintiff has not cited any case holding that facts of the sort involved in this case would entitle him to the relief he has sought from the State of Maryland and various Maryland officials.

Even if this Court were to assume that plaintiff has properly alleged the violation of a constitutional right personal to him, the complaint

does not indicate that plaintiff has suffered damages as a result of the failure of the defendants to act. An abstract violation of a constitutional right which has no harmful consequences to the plaintiff as an individual does not entitle the plaintiff to money damages under 42 U.S.C. § 1983. *United States Ex Rel. Birnbaum v. Dolan*, 452 F.2d 1078 (3d Cir. 1971). Moreover, a State prosecutor has absolute immunity from liability for damages allegedly flowing from acts performed by discharging his official duties. *Imbler v. Pachtman*, 424 U.S. 409 (1976). As the Supreme Court pointed out in its opinion in the *Imbler* case, harassment of a prosecutor by unfounded litigation would cause a deflection of the prosecutor's energies from his public duties and the possibility that he would shade his decisions instead of exercising the independence of judgment required by his public trust. *Id.* at 423.

In the *Imbler* case, a State prosecuting attorney was sued because he had instituted criminal proceedings against the plaintiff. In this case, plaintiff seeks to recover from a State prosecutor and other state officials because a prosecution has not been brought against an individual who allegedly committed a criminal act against the plaintiff. If as *Imbler* held, a prosecutor is absolutely immune from civil liability for instituting a criminal prosecution, *a fortiori*, he is similarly immune from liability for failing to file criminal charges. Were a prosecutor susceptible of suit for failing to bring criminal charges against a citizen, he might feel compelled to institute a criminal action even though the facts would not support the bringing of charges, merely to protect himself from civil liability. As the Supreme Court pointed out in *Imbler*, the broader public interest would thus be disserved because permitting such a suit would prevent the vigorous and fearless performance of the prosecutor's duty essential to the proper functioning of the criminal justice system. *Id.* at 427-428.

For various other reasons, this action cannot be maintained under any of the federal statutes relied upon by plaintiff. To state a cause of action under § 1981, a plaintiff must allege a racially discriminatory purpose. *Runyon v. McCrary*, 427 U.S. 160 (1976). Under the Eleventh Amendment, the State of Maryland is immune from suits filed by private persons seeking to impose liability for damages [sic] upon the State. *Quern v. Jordan*, 440 U.S. 332 (1979). Under Maryland law, State Police officers are not authorized to institute extradition proceedings or to commence a criminal prosecution. It is the State's Attorney for the County who is empowered to apply to the Governor for the return of an accused individual held in another state. See Article 41, § 37, Ann. Code of Md.

For the reasons stated hereinabove, a State prosecutor is immune from liability to one citizen for failure to extradite another citizen being held in another state.

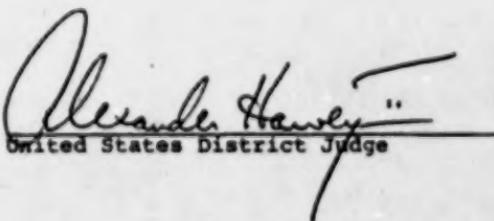
Plaintiff has likewise failed to state proper claims under §§ 1985, 1986 and 1988. He has alleged no facts indicating that defendants were motivated by a racial or other class-based invidiously discriminatory animus with respect to their acts or omissions. See *Griffin v. Breckinridge*, 403 U.S. 88 (1971). Section 1986 merely provides a remedy for misprision of a violation of § 1985, and § 1988 merely permits the recovery of attorneys' fees by a prevailing party.

In his opposition to the pending motions, plaintiff has included a lengthy discussion of the historical background of § 1981. However, he has not cited any case upholding the right of an individual to recover damages for violations of any of the statutes cited by him under facts similar to those present in this case. This Court accordingly concludes that plaintiff has not been denied the equal protection of the laws, nor have his privileges and immunities been infringed by the defendants or any of them.

For the reasons stated, it is this 24th day of August, 1983, by the United States District Court for the District of Maryland,

ORDERED:

1. That defendants' motions to dismiss be and the same are hereby granted;
2. That judgment be and the same is hereby entered in favor of the defendants with costs.



A handwritten signature in black ink, appearing to read "Alexander Harvey", is written over a horizontal line. Below the signature, the text "United States District Judge" is printed in a smaller, sans-serif font.

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 83-1924

Julian Emmett Turner, III,

Appellant,

v.

State of Maryland; Prince
George's County; Office of
State's Attorney; Arthur A.
Marshall, Jr.; Roger Millstead;
Maryland State Police; Col.
Thomas Smith; Vernon Herron;
Charles Hutchins, and Does I
through X, inclusive,

Appellees.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Alexander Harvey, II, District Judge. (C/S No. H-83-1501.)

Submitted: October 31, 1983 Decided: December 8, 1983

Before RUSSELL, WIDENER, and SPROUSE, Circuit Judges.

(Julian Emmett Turner, III, Appellant Pro Se. James J. Doyle, III, Assistant Counsel, Maryland State Police, for Appellees Maryland State Police, Herron, and Hutchins; Stephen H. Sachs, Attorney General, and Gertrude C. Bartel, Assistant Attorney General, for Appellees State of Maryland, Prince George's County, State's Attorney's Office, Marshall, and Millstead.)

PER CURIAM:

A review of the record and the district court's opinion discloses that this appeal from its order denying relief under 42 U.S.C. § 1983 is without merit. Because the dispositive issues recently have been decided authoritatively, we dispense with oral argument and affirm the judgment below on the reasoning of the district court. *Turner v. State of Maryland*, C/A No. H-83-1501 (D. Md., Aug. 25, 1983).

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 83-1924

FILED

JAN 16 1984

U. S. Court of Appeals
Fourth Circuit

Julian Emmett Turner, III,

Appellant,

versus

State of Maryland, et al,

Appellees.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Alexander Harvey, II, District Judge

Upon consideration of the appellant's pro se petition for rehearing,

IT IS ORDERED that the petition for rehearing is DENIED.

Entered at the direction of Judge Spouse for a panel consisting of Judge Russell, Judge Widener and Judge Spouse.

For the Court,

/s/ William K. Slate, II

CLERK

CONSTITUTIONAL PROVISIONS

ARTICLE III.—THE JUDICIARY

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

ARTICLE IV

Section 2, Clause 1. Privileges and Immunities

Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Section 2, Clause 2. Extradition

A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

AMENDMENT VI—JURY TRIAL FOR CRIMES, AND PROCEDURAL RIGHTS

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT XI—SUITS AGAINST STATES

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

AMENDMENT XIII—SLAVERY ABOLISHED

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

STATUTES

§ 1981. Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

§ 1982. Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

§ 1985. Conspiracy to interfere with civil rights

Preventing officer from performing duties

(1) If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or

holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

Obstructing justice; intimidating party, witness, or juror

(2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more

persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

§ 1986. Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding \$5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action wa accrued.

§ 1988. Proceedings in vindication of civil rights; attorney's fees

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts

in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

Act of Feb. 25, 1871, sec. 2, 16 Stat. 431

SEC. 2. *And be it further enacted*, That in all acts hereafter passed words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular; words importing the masculine gender may be applied to females; the words "insane person" and "lunatic" shall include every idiot, non-compos, lunatic, and insane person; and the word "person" may extend and be applied to bodies politic and corporate, and the reference to any officer shall include any person authorized by law to perform the duties of such office, unless the context shows that such words were intended to be used in a more limited sense; and the word "oath" shall include "affirmation" in cases where by law an affirmation may be substituted for an oath, and in like cases the word "sworn" shall include the word "affirmed."